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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1957

No. 443

STATE BOARD OF NATUROPATHIC EXAMINERS, ET AL.,
*Petitioners,*

*vs.*

WILL WILSON, ATTORNEY GENERAL OF TEXAS, ET AL.

## PETITION FOR REHEARING OF ORDER DENYING PETITION FOR WRIT OF CERTIORARI

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*Attorneys for Petitioners*

December, 1957

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Petitioners, State Board of Naturopathic Examiners, et al., pray that this Court grant rehearing of its order of November 12, 1957, denying petition for a writ of certiorari, the effect of which is to sustain the judgment of the Supreme Court of Texas refusing petitioners' request for writ of error. Thus, the action of this Honorable Court forecloses any further judicial relief in behalf of petitioners unless this motion for rehearing is granted.

## REASONS FOR GRANTING REHEARING AND ISSUING WRIT OF CERTIORARI

1. Presumably, petitioners have not demonstrated to the Court the existence of special and important reasons for granting a review of this case. This is probably due to the failure of the petitioners to show clearly and with proper emphasis that the result of the Court's denial of a writ of certiorari not only deprives them of their constitutional rights but, of equal importance, does so under circumstances in which petitioners have not been given an adequate review of fundamental questions raised under the Federal Constitution which directly affect the rights of 450 practitioners of naturopathy in the State of Texas. Thus, refusal of this Honorable Court to grant a writ of certiorari will result in denying petitioners of constitutional rights without adequate review.

The dilemma in this case exists because of the manner in which the federal and non-federal questions were treated in the Supreme Court of Texas and the courts below. The issue presented before the court of original jurisdiction, namely the District Court of Travis County, concerned merely the question whether the Texas Naturopathy Act was invalid on the ground of vagueness and uncertainty. The Court held it was valid thereby rejecting the Texas Attorney General's opinion holding this Act invalid. (Petition for Writ of Certiorari, Appendix A). Of extreme importance to petitioners, however, is the fact that the federal constitutional questions were not reviewed and hence were not considered in the judgment rendered by the court.

On appeal to the Court of Civil Appeals for the 3rd Supreme Judicial District Court of Texas, the decision

of the lower court was reversed on the ground the Naturopathy Act in question was invalid for vagueness under the Texas Constitution. (Petition for Writ of Certiorari, Appendix B). Hence, the Federal questions were not considered in rendering the judgment by that court.

The petitioners' application for writ of error to the Supreme Court of Texas was refused. And here again, the judgment of the court was rendered without reference to federal questions involving important Constitutional rights. However, the federal constitutional questions were clearly presented to the Supreme Court of Texas on Petitioners' motion for rehearing. (Petition for Writ of Certiorari, page 3). The motion was overruled. (Petition for Writ of Certiorari, Appendix C).

Thus, because of the way this case developed in the courts below, there is nothing in the judgments of the lower courts that would indicate that the federal constitutional questions involved have been ruled upon—although these questions were inherent throughout the entire proceedings

The failure of the Supreme Court of Texas to pass on the federal questions raised should not be conclusive on the petitioners. They are entitled to have these questions reviewed. See *Chicago B. and Q. R. Co.* v. *Illinois, ex rel. Com'rs*, 200 U.S. 561, 580; *Wood* v. *Chesborough*, 228 U.S. 672, 676.

The federal questions were always inherent in the proceedings in the lower courts and were specifically raised in petitioners' motion for rehearing to the Supreme Court of Texas. It would be grave error to permit the outcome of this case to rest on a non-federal

question thereby denying petitioners the right of review on important questions of Constitutional law. See *Enterprise Irrigation District* v. *Farmer's Mutual Canal Co.*, 243 U.S. 157, 164.

Therefore, the granting of certiorari by this court is of utmost importance if petitioners are to have the opportunity to show that basic and fundamental rights under the Federal Constitution have been violated. It is petitioners' contention that unless such relief is granted, the effect will be to deny to them a review of vital federal questions involving their constitutional rights. For it is quite obvious in reviewing the judgments rendered by the courts below that a review has not been given to these constitutional rights.

It is petitioners' contention, therefore, that they are entitled to have the question of violation of their constitutional rights reviewed and adjudicated in a real and substantial sense. And it is within the province of this court to determine whether there has been a substantive review, and a correct adjudication, of such rights by the lower courts. *Murdock* v. *Memphis*, 20 Wall. 590, 636. See also *Eustice* v. *Bolles*, 150 U.S. 361, 370.

2. The broad question presented in this case is vitally important to future professional practice involving the treatment of human ills as well as other professional endeavors. It goes to the very heart of our American system of freedom of endeavor and the nature and extent of the power of State legislatures to regulate such freedom. There exists, therefore, a need for the establishment of rules for the guidance of lower courts in determining the appropriate balance between freedom of endeavor on the one hand and

state police power regulation on the other in the treatment of human ills and in the regulation of similar private endeavors. Establishing and maintaining a proper balance between individual freedom, on the one hand, and the exercise of state power, on the other, is the very essence of providing a proper basis for protecting private property without violating due process. In speaking about the fundamental nature of due process, this Court said in a recent case, *Breithaupt* v. *Abram,* 77 S. Ct. 408, 410: ". . . due process is not measured by the yardstick of personal reaction or the sphygmogram of the most sensative person, but by the whole community sense of 'decency and fairness' that has been woven by common experience into the fabric of acceptable conduct. It is on this bedrock that this Court has established the concept of due process."

Petitioners contend that due process has not prevailed in this case and that, unless this Court grants the relief requested, they will be denied the opportunity to a review of federal questions involving important and vital Constitutional rights.

## CONCLUSION

For the reasons set forth above and in the petition for a writ of certiorari, it is respectfully urged that rehearing be granted and that, upon such rehearing, a writ of certiorari issue to the Supreme Court of Texas.

Respectfully submitted,

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BENEDICT F. FITZGERALD, JR.

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JOHN B. OLVERSON

*Counsel for Petitioners*

**Certificate of Counsel**

I hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay and is restricted to grounds specified in Rule 58 of the rules of this Court.

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BENEDICT F. FITZGERALD, JR.
*Counsel for Petitioners*

**Service**

I, Benedict F. Fitzgerald, Jr., attorney for petitioners in the above entitled action, hereby certify that on the sixth day of December, 1957, I served the above Petition for Rehearing upon Will Wilson, Attorney General of the State of Texas, by depositing a copy in the United States mails, postpaid, addressed to him at his office at Capitol Station, Austin, Texas.

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BENEDICT F. FITZGERALD, JR.